

RESOLUTION NO. 2017-23

**RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE AN
INTERGOVERNMENTAL AGREEMENT GRANTING PLANNING AUTHORITY TO
WASHINGTON COUNTY TO PROCESS A PROPERTY LOT LINE ADJUSTMENT
NECESSARY FOR ANNEXATION (HAWORTH PROPERTY)**

WHEREAS, Oregon Revised Statutes(ORS) 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and

WHEREAS, the City desires to grant planning authority to Washington County as allowed by ORS 190.010 to process a property lot line adjustment necessary for annexation of property added to the urban growth boundary by the Oregon Legislature in 2014; and

WHEREAS, the territory subject to annexation includes portions of Washington County Map and Tax Lots Numbers 1S3070000100 and 1S306D000700 commonly referred to as the "Haworth Property" as described in Exhibit A; and

WHEREAS, the property lot line adjustment necessary for the annexation will create two nonconforming parcels outside the urban growth boundary; and

WHEREAS, Washington County is the appropriate entity for processing the property lot line adjustment since state law provides authority only to counties to create nonconforming parcels when property is subject to annexation.


NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. The City Council hereby approves the Intergovernmental Agreement between the City of Forest Grove and Washington County granting planning authority to Washington County for a property line adjustment necessary to facilitate annexation (Exhibit A).

Section 2. The City Manager is authorized to sign the Intergovernmental Agreement on behalf of the City.

Section 3. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of February, 2017.


Anna D. Ruggles, CMC, City Recorder

APPROVED by the Mayor this 27th day of February, 2017.


Peter B. Truax, Mayor

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WASHINGTON COUNTY AND THE CITY OF FOREST GROVE
FOR PLANNING AUTHORITY REGARDING THE PROPERTY LINE
ADJUSTMENT BETWEEN TAX LOTS 1S307AB00801, 1S306D000700, AND
1S3070000100**

THIS AGREEMENT is entered into by and between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "COUNTY"; and the City of Forest Grove, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY," collectively referred to as the "PARTIES."

RECITALS

WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform;

WHEREAS, the properties located at 600 Elm Street, south of Taylor Way, Washington County Map and Tax Lot numbers 1S3070000100 and 1S306D000700, hereinafter referred to as "Parcel 1," is split by Metro's Urban Growth Boundary (UGB);

WHEREAS, the property located at Washington County Map and Tax Lot number 1S306D000801, hereinafter referred to as "Parcel 2," is located in the city limits of Forest Grove and within the UGB;

WHEREAS, the County land use designations for Parcel 1 include: Agricultural and Forest District (AF-20), Exclusive Farm Use (EFU) and Future Development 20-Acre (FD-20). The City zoning designation for Parcel 2 is Institutional (INST);

WHEREAS, the property owners of Parcel 1 and 2 request a Property Line Adjustment (PLA) to adjust the location of the shared property line, so that the portion of Parcel 1 located inside the UGB is included as part of Parcel 2;

WHEREAS the City is proposing to annex the portion of Parcel 1 within the UGB into its city limits;

WHEREAS, the COUNTY and CITY are in agreement that for Parcel 1, the portion of the property outside the UGB and the portion inside the UGB should be separated prior to the annexation being finalized;

WHEREAS, the CITY does not have the legal authority to approve a PLA for a property located in unincorporated Washington County or to create a parcel smaller than that allowed by the rural zoning;

WHEREAS, pursuant to the County Community Development Code Section 610-1.1.B.3(e), the COUNTY has regulations to alter parcels that are split by the UGB where the remaining parcel outside the UGB would be smaller than that allowed by the rural zoning;

WHEREAS it is the mutual desire of the COUNTY and CITY to enter into an agreement to cooperate in the PLA of Parcels 1 and 2 with the allocation of responsibilities detailed below; and

WHEREAS, this agreement does not obligate the CITY to approve annexation of any property or territory.

AGREEMENT

NOW, THEREFORE, the premise being in general as stated in the foregoing recitals, and in consideration of the terms and conditions set forth below, the Parties hereto agree as follows:

1. PROJECT DESCRIPTION AND PROJECT PLANNING

- 1.1 Parcel 1 is approximately 140 acres in size as shown in Exhibit A, of which approximately 100 acres is located in unincorporated COUNTY outside the UGB with COUNTY rural land use designations of AF-20 and EFU. The remaining approximately 40-acre portion of the parcel is located inside the UGB with a COUNTY land use designation of FD-20.
- 1.2 Parcel 2 is approximately 0.4 acre in size as shown in Exhibit A, is located in the CITY, and zoned INST.
- 1.3 The property owners are interested in a property line adjustment (PLA) to incorporate the portion of Parcel 1, inside the UGB, into Parcel 2, with the intent of annexing this urbanizable area into the CITY.

2. COUNTY OBLIGATIONS

- 2.1 COUNTY shall, upon execution of this Agreement, work with the applicant on the processing of the PLA application.
- 2.2 COUNTY shall perform all actions necessary to process the PLA of Parcel 1 and 2 to modify the land area of each parcel.

- 2.3 COUNTY shall notify the CITY of any PLA application submitted for Parcel 1 and 2, and shall provide the CITY with the opportunity to comment on said application. County agrees to consider CITY comments that address the COUNTY's approval criteria for a PLA.
- 2.4 The COUNTY agrees that the CITY retains planning authority in all other matters pertaining to Parcel 2, which is currently in the city limits of Forest Grove.
- 2.5 Planning authority for the portion of Parcel 1 currently in unincorporated county within the UGB remains with the COUNTY until an approved annexation of this area is completed, at which time the planning authority for this area will transfer to the CITY.
- 2.6 Planning authority for the portion of Parcel 1 located outside of the UGB, designated as either EFU or AF-20, remains with the COUNTY.

3. CITY OBLIGATIONS

- 3.1 The CITY grants planning authority to the COUNTY, limited to the PLA process for Parcel 1 and 2 to incorporate the portion of Parcel 1, located inside the UGB, into Parcel 2 pursuant to County Development Code Section Community Development Code Section 610-1.1.B.3(e).
- 3.2 CITY shall participate in the PLA process, at the CITY'S discretion, and may include submission of testimony during the COUNTY's property line adjustment process, particularly related to the portion of the parcel currently located within the CITY and particularly on the matters related to the consistency between CITY and COUNTY property line adjustment regulations.
- 3.3 CITY shall notify the COUNTY of future annexation of the unincorporated territory within the UGB and shall provide the COUNTY with the opportunity to comment on said application.

4. COMPENSATION

- 4.1 There will be no exchange of compensation between CITY and COUNTY regarding the land use processes for the parcel described herein.

5. GENERAL PROVISIONS

- 5.1 LAWS OF OREGON
The Parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement

shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279C to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

5.2 DEFAULT

Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the default.

5.3 INDEMNIFICATION

This Agreement is for the benefit of the Parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this Agreement.

5.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement is binding unless in writing and signed by both Parties.

5.5 DISPUTE RESOLUTION

The Parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the Parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both Parties for a recommendation or resolution.

5.6 REMEDIES

Subject to the provisions in paragraph 5.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court

In the event of any controversy or claim arising out of or relating to this agreement, or the breach thereof, the Parties may use all available remedies. In the event of mediation or arbitration, the costs shall be shared equally by the Parties to the dispute. Each party shall be responsible for its own costs and attorney fees for any claim, action suit or proceeding, including any appeal.

5.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

5.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in anyway.

5.9 INTEGRATION

This Agreement is the entire agreement of the Parties on its subject and supersedes any prior discussions or agreements regarding the same subject

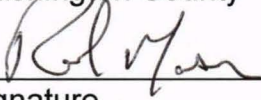
6. TERMS OF AGREEMENT

6.1 The term of the Agreement shall be from the date of execution until the completion of the land division and annexation of the Parcel, but not to exceed five (5) years.

6.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the Parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the Parties may otherwise agree.

IN WITNESS WHEREOF, the Parties hereto acknowledge that they understand the terms and conditions of this Agreement and agree to be bound to those terms and conditions.

Washington County


Signature

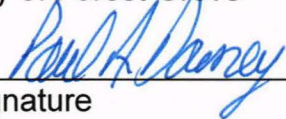
Rob Massar

Asst. County Administrator

Title

3/13/17
Date

City of Forest Grove


Signature

Administrative Services Director

Title

February 27, 2017

Date



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CITY RECORDER USE ONLY:

AGENDA ITEM #: 7

MEETING DATE: 2/27/17

FINAL ACTION: 3-10-2017-23

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

PROJECT TEAM: *Daniel Riordan, Senior Planner, Jon Holan Community Development Director*

MEETING DATE: *February 27, 2017*

SUBJECT TITLE: *Resolution Authorizing City Manager to Execute An Intergovernmental Agreement Granting Washington County Planning Authority to Process a Property Lot Line Adjustment Necessary for Annexation (Haworth Property)*

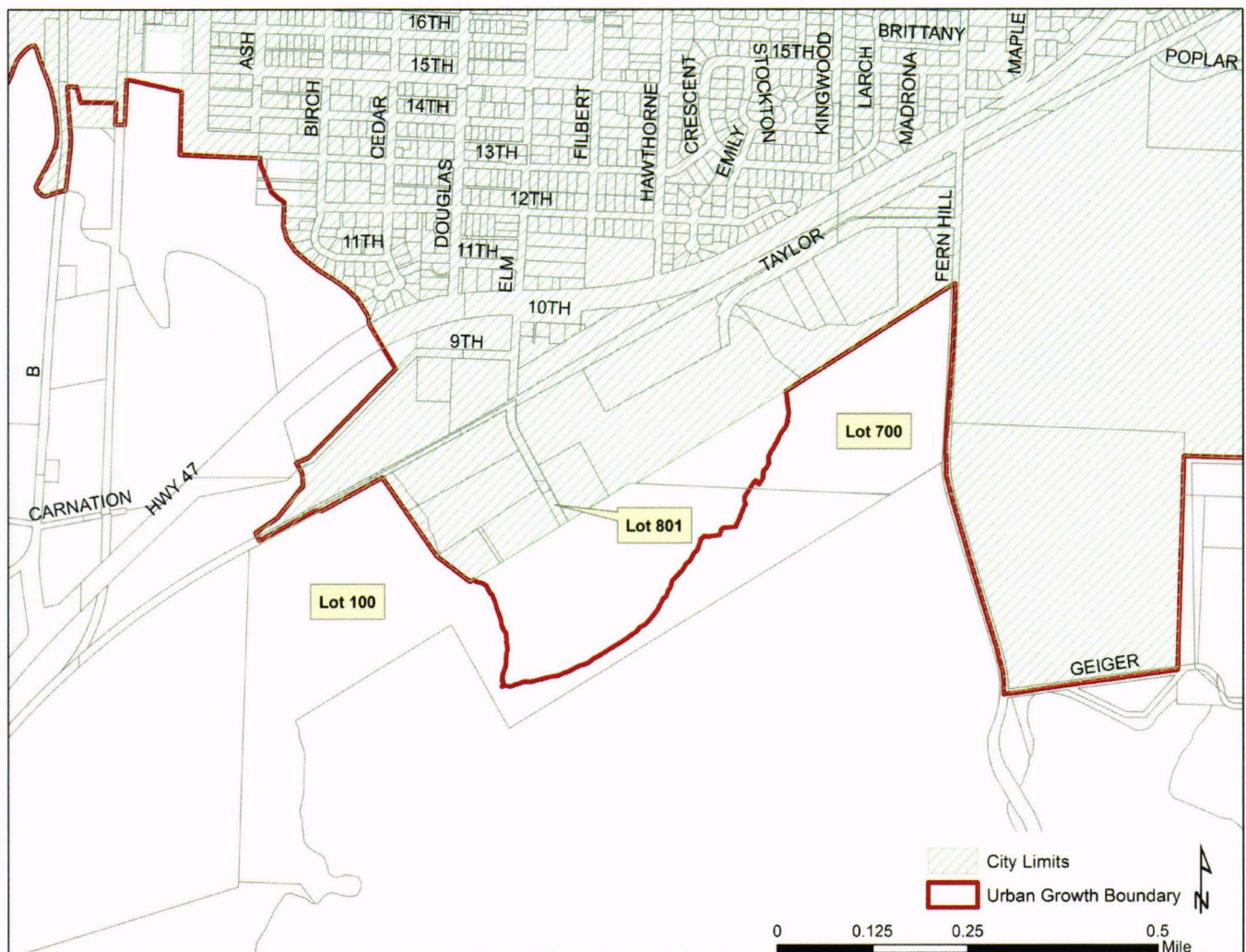
ACTION REQUESTED:

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Ordinance	Order	X	Resolution	Motion	Informational

X all that apply

ISSUE STATEMENT: Hally and Mary J. Haworth, the owners of property located south of Taylor Way and the Elm Street terminus, have applied to annex a portion of their ownership added to the urban growth boundary by the Oregon Legislature in 2014. The property added to the urban growth boundary is comprised of two tracts, the majority of which remain outside the urban growth boundary. To facilitate annexation of the property located inside the urban growth boundary a property line adjustment (PLA) must be completed by Washington County. The PLA will merge the property added to the urban growth boundary with a small lot owned by the Haworth's currently in the city limits. Since the PLA involves property in the City, the Washington County Department of Land Use and Transportation requested that the City execute an intergovernmental agreement (Attachment A) that provides planning authority to the County to process the PLA. This agreement has been reviewed for approval by the City Attorney. After the PLA is completed by the County the annexation can proceed through the standard City process.

BACKGROUND: In 2014, the Oregon Legislature added portions of two parcels owned by Hally and Mary J. Haworth into the urban growth boundary. The subject parcels are located at the terminus of Elm Street, south of Taylor Way near the AT Smith House and include Washington County Map and Tax Lots 1S3070000100 (Lot 100) and 1S306D00700 (Lot 700) as shown on the map below. The Haworth's also own Map and Tax lot 1S307AB00801 (Lot 801) inside the city limits. The map below shows the three parcels owned by the Haworth's.



There are two ways the Haworth's could approach annexation. The first approach is to annex all of Lot 100 and Lot 700. The second approach is to annex only the portion of the Haworth ownership inside the urban growth boundary. The property owner desires to move forward with the second approach since only land the developable portion of the Haworth's ownership would be brought into the City. If the parcels in their entirety were brought into the City a situation would exist where there would be County zoning inside the City. As such, this presents a situation where the City would be administering the County's zoning regulations which is not desirable from administrative stand-point.

Since the Haworth's desire to annex only the territory inside the urban growth boundary a PLA must be completed by the County. The purpose of the PLA is to create a legal lot comprising only the property in the urban growth boundary. The Haworth's own a small tax lot (Lot 801) currently in the City. This lot will be merged with the unincorporated area inside the urban growth property. Once the lots are merged annexation of the unincorporated territory may proceed through the standard process.

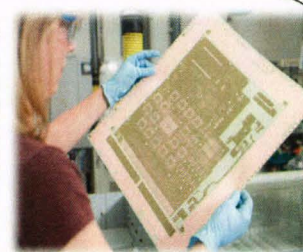
Another reason for the intergovernmental agreement is after the PLA is completed the remaining areas outside of the urban growth boundary will become nonconforming. This is because the minimum lot sizes will be less than required by the Washington County Community Development Code. To resolve such issues, legislation was recently adopted by the Legislature that provides legal authority to counties to create nonconforming parcels outside the urban growth boundary when property is subject to annexation. Cities do not have this same authority.

FISCAL IMPACT: If approved, the intergovernmental agreement will not have a fiscal impact on the City. The intergovernmental agreement simply provides planning authority to the County to process a property line adjustment to create a parcel entirely within the urban growth boundary and to facilitate annexation.

STAFF RECOMMENDATION: Staff recommends the City Council adopt a resolution authorizing the City Manager to execute an Intergovernmental agreement between the City and Washington County to provide planning authority to the County to process a property line adjustment affecting property owned by Hally and Mary J. Haworth subject to annexation petition.

ATTACHMENT(s):

- A. Intergovernmental agreement between the City of Forest Grove and Washington County;
- B. Resolution providing authority to the City Manager to sign an intergovernmental agreement between the City of Forest Grove and Washington County for a property line adjustment affecting property subject to annexation.
- C. PowerPoint Presentation



Intergovernmental Agreement (IGA) with Washington County to Process Property Line Adjustment

City Council Meeting
February 27, 2017

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Request

- Staff is requesting that City Council adopt a resolution authorizing the City Manager to execute an intergovernmental agreement (IGA) with Washington County.
- The IGA will grant planning authority to Washington County to process a property line adjustment involving property added to the urban growth boundary (UGB) by the Legislature in 2014 owned by Hally and Mary Haworth.
- Washington County must process the property lot line adjustment because the annexation will create nonconforming parcels outside the UGB. Only counties have authority to address this situation.



Staff Recommendation

- To facilitate annexation of the Haworth property added to the urban growth boundary, staff recommends:
 - **City Council approve a resolution authorizing the City Manager to execute an intergovernmental agreement (IGA) with Washington County and granting the necessary planning authority to process a property lot line adjustment in order to facilitate annexation of the Haworth property added to the urban growth boundary.**